

122 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Florida Gas Transmission Company, LLC

Docket No. RP07-331-000

ORDER REMOVING REFUND CONDITION

(Issued March 7, 2008)

1. On March 1, 2007, Florida Gas Transmission Company, LLC (Florida Gas) filed a revised tariff sheet¹ to recover the depreciation expense and pretax return on certain defined capital expenditures (Capital Costs) through a surcharge (Capital Surcharge) under its Rate Schedules FTS-1 (Firm Transportation Service) and SFTS (Small Firm Transportation Service) pursuant to Article IX of the stipulation and agreement of settlement (settlement) filed on August 13, 2004, in Docket Nos. RP04-12 and RP00-387² and section 26 of the General Terms and Conditions (GT&C) of its tariff (March 1, 2007 filing). Following the receipt of a protest to the filing, and Florida Gas' answer, on March 30, 2007,³ the Commission accepted and suspended the revised tariff sheet to become effective April 1, 2007, subject to refund and further review. The March 30, 2007 Order permitted the parties to file a response to Florida Gas' answer to the protests. Upon further review of the record in this proceeding, including the comments of the parties in response to the March 30, 2007 Order, the Commission finds that Florida Gas has sufficiently supported its filing, as discussed below. Therefore, we remove the refund condition established by the March 30, 2007 Order.

¹ Fourth Revised Sheet No. 7 to Florida Gas' FERC Gas Tariff, Fourth Revised Volume No. 1.

² The settlement was conditionally approved by Commission order dated December 21, 2004, in *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 (2004).

³ *Florida Gas Transmission Co., LLC*, 118 FERC ¶ 61,264 (2007) (March 30, 2007 Order).

Background

2. The central issue in this case involves the question of how certain costs are to be allocated under a rate settlement between two rate schedules on Florida Gas' system: the "non-incremental system" Rate Schedule FTS-1 and SFTS rates, or the "incremental system" Rate Schedule FTS-2 rates. In an order issued January 15, 1993, the Commission approved the first of a number of Florida Gas system expansions, the Phase III expansion.⁴ The Phase III Expansion Project involved a major addition to the Florida Gas system, including installing over 800 miles of new pipeline facilities consisting mainly of looping, and went into service on March 1, 1995. A 1992 Settlement established incremental, levelized FTS-2 rates effective on March 1, 1995, when the Phase III expansion was placed in service. Rate Schedule FTS-1 applied to service on Florida Gas' pre-March 1, 1995 system (non-incremental system) at rates that recover the cost of those facilities, and Rate Schedule FTS-2 applied to service on the Phase III expansion facilities (incremental system) at rates that recovered the Phase III expansion costs on an incremental basis.⁵ The Commission's approval of the project included approval of a settlement agreement addressing Phase III expansion project issues which required the costs of any future expansion of the Phase III facilities to be rolled into the Rate Schedule FTS-2 rates for the incremental system, provided the application was filed with the Commission prior to July 1, 1998.⁶ Following certification of the Phase III expansion, Florida Gas obtained certificate approval for four more expansion projects.⁷

⁴ *Florida Gas Transmission Co.*, 62 FERC ¶ 61,024 (1993).

⁵ *See Florida Gas Transmission Co., et al.*, 105 FERC ¶ 61,171 (2003), *order on reh'g*, 107 FERC ¶ 61,074 (2004).

⁶ 62 FERC ¶ 61,024 at 61,176 and 61,181 (1993).

⁷ *See*: Phase IV Expansion Project, 88 FERC ¶ 61,142 (1999) (preliminary determination), *order issuing certificate*, 90 FERC ¶ 61,212; Phase V Expansion Project, 93 FERC ¶ 61,203 (2000) (preliminary determination), *order issuing certificate and granting abandonment authorization*, 96 FERC ¶ 61,151 (2001); Phase VI Expansion Project, 98 FERC ¶ 61,127, *order issuing certificate*, 99 FERC ¶ 61,311 (2002); Phase VII Expansion Project. In a June 2006 Order in the Phase VII expansion proceeding, the Commission denied Florida Gas' request to roll in the costs to Rate Schedule FTS-2, finding that it would be "premature to make a predetermination on rolling in the proposed expansion's costs because [Florida Gas] could file its next rate case before project revenues exceed costs on an annual basis." *Florida Gas Transmission Co.*, 115 FERC ¶ 61,328, at P 42, *reh'g denied*, 117 FERC ¶ 61,242 (2006).

3. On October 1, 2003, Florida Gas filed a general rate increase in Docket Nos. RP04-12 and RP00-387, including revised rates for Florida Gas' Rate Schedules FTS-1 and FTS-2 for its non-incremental and incremental systems, respectively. Although the Phase III settlement provision expired before it filed applications for its Phase IV, V, and VI Expansion Projects, Florida Gas' rate filing included its proposal to roll in the costs and billing determinants of the Phase IV, V, and VI expansion projects into the rates for service under Rate Schedule FTS-2. Florida Gas also included a *pro forma* proposal to track certain types of capital costs. The filing was accepted and suspended and set for hearing, which resulted in the settlement filed on August 13, 2004, which was conditionally approved by the Commission in an order issued December 21, 2004.⁸ Article IX of the settlement, as implemented in section 26 of the GT&C of Florida Gas' tariff, provided that Florida Gas may, during the Settlement Term,⁹ file a limited section 4 rate increase filing to seek recovery of the depreciation and pretax return on certain defined "Capital Costs."¹⁰ Section 26 of the GT&C implemented by the settlement provides: "Such Capital Costs shall be recovered through a Capital Surcharge, separately stated for incremental (Rate Schedule FTS-2) and non-incremental (Rate Schedule FTS-1 and SFTS) Market Area firm transportation services."

4. Section 26(B)(1) further provides that Florida Gas shall separately track Capital Costs for the incremental and non-incremental systems completed and closed

⁸ *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 (2004).

⁹ Article XV, section 5, of the settlement provides that:

Except as otherwise provided in Article VI (Sections 1, 2, 3, 6, and 7), Article VII (Sections 1, 3, 4, and 5), and Article VIII (Sections 6 and 7), the term of the Settlement ("Settlement Term") shall commence on the Effective Date and shall terminate upon the effective date of revised rates: (a) filed by [Florida Gas] in a subsequent NGA section 4 general rate case that complies with the limitations established in Article XII, or (b) established in an NGA section 5 proceeding that results in changes to [Florida Gas'] base rates for service.

¹⁰ Section 26 provides that Capital Costs are costs resulting from capital additions placed into service and retirements of facilities removed from service for those expenditures necessary to: (i) enhance system security (Security Costs); (ii) comply with the provisions of the Pipeline Safety Improvement Act of 2002 (PSIA) and regulations issued thereunder (Integrity Costs); and (iii) relocate or replace portions of Florida Gas' system to accommodate expansions or improvements to the Florida Turnpike, as required by the Florida Department of Transportation (Turnpike Costs) (collectively, Capital Costs).

to plant in service subsequent to February 29, 2004, and such costs shall be recorded on the respective system's accounting books. Section 26(B)(1) of the GT&C states that Capital Costs that cannot be directly assigned shall be allocated, for purposes of allocating the Capital Surcharge, between incremental and non-incremental systems on a 50 percent/50 percent ratio basis for the applicable period or year. Section 26(B)(1) also states that "in any Capital Surcharge filing, transporter shall file detailed workpapers and appropriate support for the Capital Costs expended, separately stating such costs for the applicable system (incremental or non-incremental)." Section 26(B)(3)(b) provides that in the event Florida Gas makes a Capital Surcharge filing, it must make subsequent annual filings to be effective on April 1 to reflect relevant cost adjustments recorded by the preceding December 31.

5. On February 28, 2006, Florida Gas filed in Docket No. RP06-255-000 to establish an initial reservation Capital Surcharge for its non-incremental system of \$.01 per MMBtu for Rate Schedule FTS-1, and an initial volumetric Capital Surcharge of \$.02 per MMBtu for Rate Schedule SFTS. The Capital Surcharges were designed to recover approximately \$24.9 million of eligible Capital Costs for projects completed and closed to plant-in-service for the period March 1, 2004, through December 31, 2005. Florida Gas stated that it was not proposing to establish a Capital Surcharge applicable to Rate Schedule FTS-2 because there were no Capital Cost expenditures for its incremental system through December 31, 2005, that were eligible for recovery through a Capital Surcharge. The filing was protested principally on the deficiency of detailed information on each cost item as required by section 26, and in an order issued March 31, 2006, the Commission accepted and suspended the filing subject to refund and to further review of detailed information Florida Gas provided in its answer to the protests, effective April 1, 2006.¹¹ Subsequently, having received no further adverse comments, the Commission removed the refund condition.¹²

6. In the instant proceeding, on March 1, 2007, Florida Gas filed a revised reservation Capital Surcharge of \$.02 per MMBtu for Rate Schedule FTS-1, and a revised volumetric surcharge of \$.04 per MMBtu for Rate Schedule SFTS. Florida Gas stated that it did not propose to establish a Capital Surcharge applicable to Rate Schedule FTS-2 because there were no Capital Cost expenditures for its incremental system through December 31, 2006, that were eligible for recovery through a Capital Surcharge.

7. Peoples Gas System, A Division of Tampa Electric Company (Peoples), Florida Power & Light Company (FPL), the Florida Municipal Natural Gas

¹¹ *Florida Gas Transmission Co.*, 114 FERC ¶ 61,342 (2006).

¹² *Florida Gas Transmission Co.*, 115 FERC ¶ 61,182 (2006).

Association (FMNGA), and Florida Cities (collectively, Joint Protestors) filed a joint protest. In its intervention, Seminole Electric Cooperative, Inc. (Seminole) raised concerns regarding the claimed Capital Costs. Joint Protestors contended that Florida Gas' filing raises questions about whether the capital expenditures included in its filing are eligible Capital Costs, whether Florida Gas has properly calculated its proposed Capital Surcharges, and whether the Capital Costs proposed by Florida Gas have been properly allocated and/or assigned to the incremental and non-incremental systems. Joint Protestors argued that the Commission should direct Florida Gas to submit additional information so that Florida Gas customers can determine the answers to the questions raised by its filing and, if necessary, convene a technical conference. Joint Protestors stated that the Commission should direct Florida Gas to provide the information necessary to support its filing and specifically explain why the costs of its work projects that relate to both the non-incremental and incremental systems should not be shared.

8. Joint Protestors argued that it is improper for Florida Gas to directly assign the claimed costs only to the non-incremental system, given the fact that Florida Gas has not presented evidence that these costs are directly related to the non-incremental system or demonstrated it is capable of properly accounting for such direct assignment. Joint Protestors asserted that the direct assignment of many of the costs Florida Gas claims in its filing is not appropriate, and these costs should be allocated equally as shared costs between the FTS-1/SFTS and FTS-2 services pursuant to the 50/50 allocation methodology approved in the settlement and Florida Gas' tariff.

9. Joint Protestors contended that Florida Gas has not shown that all of the costs at issue here are directly related solely to the non-incremental system or that it has properly established an accounting system for directly assigning these costs to non-incremental facilities. Joint Protestors argued that many of the expenditures made by Florida Gas relate to both the non-incremental and the incremental facilities. Joint Protestors asserted that, for example, with respect to the entry on Schedule 3, Line 2, Florida Gas' filing does not reflect the fact that the non-incremental St. Petersburg Lateral was expanded by uprating as part of the Phase III expansion. Joint Protestors further asserted that to the extent the pipe replacement allowed Florida Gas to pig the St. Petersburg Lateral, where facilities were added or uprated in the Phase III expansion, this cost relates to both the incremental and non-incremental systems and should not be directly assigned only to the non-incremental system.

10. Joint Protestors contended that, similarly, concerning the entry on Schedule 3, Line 27, the non-incremental Jacksonville 16" Lateral was expanded during Florida Gas' Phase V expansion, which added looping that tied into the existing lateral to allow incremental volumes to flow on the entire lateral. Joint Protestors further contended that the costs of the investigative dig therefore relate to both existing and incremental facilities. Joint Protestors (at 8) asserted that the costs of several other

projects should be allocated on a shared basis between FTS-1/SFTS and FTS-2 services because the lateral facility at issue was expanded as part of Florida Gas' Phase III expansion, including the entries at Schedule 3, Lines 17, 20, 42, 43, and 48.¹³

11. Joint Protestors also contended that Florida Gas has not demonstrated that the costs it seeks to recover were incurred to identify or assess pipeline integrity in high consequence areas (HCAs) or to take specific action to assure pipeline integrity in HCAs.¹⁴

12. In its intervention, Seminole asserted that some of the costs included in the filing may be considered maintenance costs not capital costs. Seminole further asserted that it is not clear that costs related to hydrostatic testing, for example, are actually capital costs, since the Commission's policies call for costs incurred to inspect, test, and report on the condition of plant to determine the need for repairs or replacement to be charged to maintenance expense.

13. In its answer, Florida Gas included a narrative response addressing the concerns of Joint Protestors and Seminole and an appendix containing descriptions of the capital costs and related HCAs. Florida Gas contended that all of the costs at issue were incurred in connection with projects addressing HCAs. Florida Gas further asserted that there is no merit to Joint Protestors' proposal to allocate costs equally between FTS-1/ SFTS and FTS-2 services since such costs are directly related solely to the non-incremental system. Florida Gas asserted that the Project Description column of Attachment A, schedule 3, of the March 1, 2007 filing, identifies the installation date of each facility on which the work was performed. Florida Gas further asserted that, as shown therein, all of the projects at issue involved work on facilities that were installed prior to the in-service date of facilities constructed to provide FTS-2 service, which it states were first placed in service on February 28, 1995. Florida Gas contends that, therefore, all of the work at issue relates to facilities

¹³ Projects 721082, 721085, 721273, 721275, and 721310.

¹⁴ Section 26(A)(2) defines Integrity Costs to include costs incurred: "(a) to identify and assess the integrity of the pipeline in high consequence areas ("HCAs") on its pipeline, including performing in-line inspections of the pipeline (commonly referred to as "smart pigging", which requires pig launchers and receivers not already installed at certain points along the system, the removal of any restrictions or obstructions that would impede the pig, such as certain types of valves, and dents or bends in the pipeline), hydrostatic testing, or other assessment, and (b) to take specific actions to assure the integrity of the pipeline in those areas, and remediate any conditions that exceed the allowable limits (such as re-coating, repairing, or replacing line or equipment)."

that were installed for FTS-1/SFTS services and, accordingly, all of the costs are properly included in the Capital Surcharge for FTS-1/SFTS services.

14. Florida Gas further argued that the costs related to the non-incremental system and the incremental system are routinely placed in long-established, segregated subaccounts, i.e., the gas plant related subaccounts of Account No. 101, Gas Plant in Service. Florida Gas contended that the settlement did not require it to establish a new accounting system for costs related to the non-incremental system and incremental system. Florida Gas further contended that the settlement provided that Capital Costs for non-incremental and incremental facilities would be accounted for separately in the already existing, separate accounting books for each system. Florida Gas asserted that, in categorizing the costs at issue in the instant filing, it followed its well-established procedures for separately accounting for the costs of the non-incremental and incremental systems. Florida Gas further asserted that the settlement did not authorize it to reclassify any of its gas plant from the incremental system accounts to the non-incremental system accounts, or from the non-incremental system accounts to the incremental system accounts.

15. Florida Gas argued that there is no merit to the argument in the Joint Protest (at 7-9) that with regard to the projects identified and listed there, the costs are related to both Florida Gas' non-incremental and incremental systems and, therefore, should be allocated to both systems. Florida Gas contended that, in fact, it could be argued that the entire pipeline is related to both systems for a variety of reasons. Florida Gas further contended that, however, following the construction of the Phase III expansion facilities, the first of the incremental facilities, and the commencement of service under Rate Schedule FTS-2, the facility costs for the non-incremental system (for service under Rate Schedules FTS-1 and SFTS) and the incremental system (for service under Rate Schedule FTS-2) have been placed in separate accounts based upon the service for which the facilities were constructed. Therefore, Florida Gas concludes that the costs under the PSIA also are assigned to the system and the service for which the facilities were constructed to coincide with the classification of the original cost of those facilities. Finally, Florida Gas contended that there is no unfairness in this result since all of the facilities listed in Attachment A to the March 1, 2007 filing are older facilities and the PSIA requires it to rank facilities according to risk and to assess the first 50 percent of the most risky facilities by December 17, 2007.

16. In response to Seminole, Florida Gas argued that there is no merit to Seminole's argument with respect to hydrostatic testing. Florida Gas asserted that the settlement and Florida Gas' Tariff specifically define Capital Costs to include costs such as those incurred for hydrostatic testing, citing section 26(A)(2) and the settlement at Article IX, section 1.

17. The March 30, 2007 Order in this proceeding accepted and suspended the revised tariff sheet to be effective April 1, 2007, subject to refund and conditions and further review by the Commission. The parties were permitted to file a response to Florida Gas' March 21, 2007 answer. On April 19, 2007, Joint Protestors filed a response to the March 21 answer (April 19 response). On May 1, 2007, Florida Gas filed an answer to the April 19 response (May 1 answer), and Joint Protestors filed a response to Florida Gas' May 1 answer on May 9, 2007 (May 9 response).¹⁵

Joint Protestors' April 19 Response

18. Joint Protestors argue that Florida Gas has not demonstrated in its answer that the projects for which it seeks to recover are all solely related to the non-incremental system and has not refuted the argument that most or many of these costs should be allocated equally between the FTS-1/SFTS and FTS-2 services pursuant to the settlement. Joint Protestors contend that many (perhaps most) of the facilities at issue are used jointly by customers taking service on both the non-incremental and the incremental systems. Joint Protestors further contend that Florida Gas has not shown why, despite this fact, most or many of the costs it seeks to recover should not be shared equally between non-incremental and incremental customers, based on section 26(B) and the settlement.

19. Joint Protestors assert that section 26(B) provides that, for purposes of calculating the Capital Surcharge, Capital Costs that cannot be directly assigned to either the non-incremental or incremental systems shall be allocated equally between the non-incremental and incremental systems. Joint Protestors further assert that this requires Florida Gas to allocate 50 percent of such costs to shippers on the non-incremental system and 50 percent to shippers on the incremental system.

20. Joint Protestors recognize that Florida Gas asserts that the projects for which it seeks to recover costs through the Capital Surcharge were all undertaken as a result of improvements or additions to facilities that were installed prior to the in-service date of the incremental system. Joint Protestors acknowledge (at 3) that Florida Gas affixed the expansions to the non-incremental system facilities, but argue that this

¹⁵ Pursuant to 18 C.F.R. § 385.213 (2007), answers to either protests or answers are not permitted. Joint Protestors argue, in their May 9 response, that Florida Gas' May 1 answer is unauthorized under that rule and should be rejected. However, the Commission finds good cause to admit both Florida Gas' May 1 answer and Joint Protestors' May 9 response since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record upon which the Commission may act. Therefore, the Commission accepts both Florida Gas' May 1 answer and Joint Protestors' May 9 response.

ignores the fact that most or many of the facilities that Florida Gas improved or added relate to services for both non-incremental and incremental customers. Joint Protestors assert that for example, at Schedule 3, Line 2 of the March 1 filing, Florida Gas states it incurred \$1,390,628.12 to replace 2,800 feet of pipe to make the non-incremental St. Petersburg Lateral piggable, and as a result, it condemned a parcel of land. Joint Protestors further assert that the St. Petersburg Lateral was expanded by uprating as part of Florida Gas' Phase III expansion and, to the extent the pipe replacement allowed Florida Gas to pig the St. Petersburg Lateral, where facilities were added or uprated during the Phase III expansion, this cost relates to both the non-incremental and incremental systems, since these facilities are used to provide service to both FTS-1/SFTS and FTS-2 customers.¹⁶ Joint Protestors contend that Florida Gas failed to provide any additional detail that would allow customers to determine whether Florida Gas in fact uses the facilities it improved or added to provide service to both its non-incremental and incremental customers and, therefore, it should not assign 100 percent of these costs permanently to non-incremental customers.

21. Joint Protestors assert that they are unable to determine from the March 1, 2007 filing and Florida Gas's answer the amount of Capital Costs that should be subject to the 50/50 sharing mechanism. Joint Protestors request, in light of this uncertainty, that the Commission convene a technical conference and require Florida Gas to explain in detail the costs incurred with respect to each of its projects, and why costs associated with both non-incremental and incremental services should not be shared.

22. Joint Protestors request that the Commission rule that FTS-1/SFTS shippers will not be precluded from challenging the classification or allocation of any Capital Costs, including facilities and operating and maintenance costs, or from proposing their own classification or allocation methodology for such costs, in a future Florida Gas' section 4 general rate case as a result of the Commission's decision herein or in other Florida Gas' Capital Cost recovery dockets. Joint Protestors contend that, as shown by the March 1, 2007 filing, Florida Gas currently allocates its facilities costs based on an accounting system that reflects only when particular facilities were built and fails to undertake any substantive examination of which costs benefit which customers. Joint Protestors assert that, for instance, in the present case, it appears that Florida Gas has simply assigned costs to the non-incremental system based on the rationale that the improvements were made to non-incremental facilities, but it has not undertaken a substantive review of whether those facilities are actually used to provide services to both non-incremental and incremental customers. Joint Protestors

¹⁶ Joint Protestors also cite the additional examples at 7-9 of their protest as costs which should be allocated equally between non-incremental and incremental customers.

further assert that Florida Gas' recent section 4 general rate cases have been resolved by settlements, which do not establish any precedent regarding facilities cost allocations.

23. Joint Protestors contend that the Capital Costs sought to be recovered by Florida Gas in this docket may include costs that would typically be viewed by the Commission as operating and maintenance (including administrative and general) expenses. Joint Protestors argue that any Capital Costs recovered by Florida Gas pursuant to the settlement should be subject to review after the expiration of the settlement, i.e., in Florida Gas' next section 4 general rate case, to determine whether the costs are appropriately allocated. Joint Protestors assert that shippers on the non-incremental system should not be precluded by the Commission's decision in this proceeding or decisions in other Capital Cost recovery dockets from arguing in a future Florida Gas' section 4 general rate case that Capital Costs, or other facilities costs, assigned to the non-incremental system are more appropriately allocated to the incremental system. Joint Protestors further assert that customers should not be precluded from arguing after the expiration of the settlement that claimed Capital Costs, which are in reality operating and maintenance costs, should not be treated as facilities costs for purposes of future ratemaking. Joint Protestors contend that, while the settlement may allow Florida Gas to treat hydrostatic testing costs as Capital Costs, this should not preclude customers from arguing or the Commission from finding after the expiration of the settlement that the testing costs should be treated as operating and maintenance, rather than capital costs.

Florida Gas' May 1 Answer

24. In its answer to the response, Florida Gas argues that all of the costs incurred for each of the items listed in the Joint Protest were incurred for non-incremental facilities only, not incremental facilities, and are properly assigned to Rate Schedule FTS-1. Florida Gas answers that the Joint Protestors mistakenly argue that because there has been an expansion or extension of some non-incremental facilities by the addition of incremental facilities, work done on the non-incremental facilities in the March 1, 2007 filing includes work done on the incremental facilities.

25. Florida Gas contends that, with respect to the entry on Schedule 3, Line 2 of the March 1, 2007 filing, the contention that the replacement of a segment of 20-inch line with 16-inch line to enable continuous pigging of the non-incremental 16-inch portion of the St. Petersburg Lateral and the associated right-of-way acquisition allowed it to pig the entire St. Petersburg lateral is incorrect. Florida Gas asserts that the installation of a new 16-inch line from MP 38.81 to 39.35 only allowed it to pig the non-incremental 16-inch portion of the St. Petersburg Lateral from MP 28.2 to 49.6, as indicated on Schedule 3, Line 42. Florida Gas further asserts that the Phase III expansion of the St. Petersburg Lateral involved the addition of a piece of parallel

22-inch looping from MP 34.2 to 49.6. Florida Gas contends that a pig launched in the parallel 16-inch line could not physically enter the parallel 22-inch line and, therefore, the costs listed on Lines 2 and 42 were incurred exclusively for the non-incremental facilities.

26. With respect to the entry on Schedule 3, Line 27, Florida Gas argues that the contention that the digs done on the 16-inch portion of the Jacksonville Lateral could have been done on the incremental facilities added in the Phase V expansion is mistaken. Florida Gas asserts that the Phase V expansion added 20-inch loop, and the 16-inch line was installed in 1959 as part of the original facilities. Florida Gas further asserts that the digs were done exclusively on the 16-inch line, which is an independent line located separately from the 20-inch line. Florida Gas contends that, therefore, the cost listed on Schedule 3, Line 27 was incurred exclusively for the non-incremental facilities.

27. Florida Gas argues that, Joint Protestors mistakenly challenge the entries on Schedule 3 at Line 17 (installation of a pig launcher at MP 65.7), Line 20 (installation of the matching pig receiver at MP 49.6), and Line 43 (the actual pigging operation on the 16-inch line from MP 65.7 to MP 49.6), all relating to the St. Petersburg Lateral. Florida Gas asserts that while Joint Protestors contend that these three items could allow pigging in the portion of the St. Petersburg Lateral added in the Phase III expansion, the Phase III expansion added a 22-inch parallel loop from MP 34.2 to MP 49.6. Florida Gas contends that the pig on the 16-inch line which requires a 20-inch pig launcher could not physically enter the parallel Phase III expansion 22-inch line (which requires at least a 28-inch pig launcher) and the matching receiver would not accommodate a pig on the Phase III 22-inch line. Florida Gas further contends that there is no physical way for a pig to cross from one line into a parallel line, and, therefore, these pigging facilities could never be used on the Phase III expansion incremental facilities. Florida Gas asserts that the actual pigging was done exclusively on the 16-inch line installed in 1970. Florida Gas argues that, therefore, the costs listed on Lines 17, 20, and 43 were incurred exclusively for the non-incremental facilities.

28. With respect to Joint Protestors' challenge (at 8 of their protest) to the entry on schedule 3 at Line 48, Florida Gas responds that the entry on Schedule 3, Line 48 represents the emergency replacement of a portion of 18-inch line at MP 15.0 of the St. Petersburg Lateral to remove three anomalies found during an inspection. Florida Gas further responds that this line was installed in 1959 and is an independent line located separately from the 22-inch Phase III expansion parallel loop from MP 34.2 to MP 49.6. Florida Gas concludes that, therefore, the cost listed on Line 48 was incurred exclusively for the non-incremental facilities.

29. Florida Gas argues that Joint Protestors' argument that certain of the facilities

at issue are used jointly by customers taking service on both the non-incremental and incremental systems and that Florida Gas has not shown why the related costs should not be shared equally is contrary to the settlement methodology. Florida Gas contends that the 50-50 allocation of costs applies only in the case of costs associated with a project that cannot be directly assigned to the incremental or non-incremental systems, such as fences between incremental and non-incremental facilities. Florida Gas further contends that there was no such instance in the March 1, 2007 filing. Florida Gas asserts that the settlement provided that Capital Costs for non-incremental and incremental facilities would be accounted for separately in the already-existing, separate accounting books for each system. Florida Gas further asserts that, in categorizing the costs at issue, it followed its well-established procedures for separately accounting for the costs of the non-incremental and incremental systems. Florida Gas argues that the settlement did not authorize it to reclassify any of its gas plant from the incremental system accounts to the non-incremental system accounts, or from the non-incremental system accounts to the incremental system accounts. Florida Gas further argues that these provisions of the settlement and the tariff govern the assignment of the costs of the pipeline integrity program related to the respective facilities and this methodology was a critical and essential part of the overall agreement to resolve all issues in its last rate case. Florida Gas asserts that, since October 31, 2006, it has been ready to provide any requested information pursuant to the procedure set forth in Article IX, section 10 of the settlement to provide information to the Settling Parties which have executed a confidentiality agreement.¹⁷

30. Florida Gas contends that its tariff and the settlement provide that shippers may challenge the proposed Capital Surcharge only on four limited grounds which do not include an attack on the agreed upon and Commission-approved methodology for recovery of Capital Costs.¹⁸ Finally, Florida Gas contends that arguments related to what may or may not be argued in a future rate case are premature and not properly part of the response.

¹⁷ Florida Gas asserts that it sent copies of such cost information to three of the Joint Protestors (Peoples, FPL, and FMNGA), and it received email notification that Florida Cities, which never executed a confidentiality agreement, deleted without reading the October 31, 2006 email sending the cost information.

¹⁸ Section 26(B)(4) provides that Shippers shall have the right to challenge the Capital Surcharge only with respect to: (a) whether the capital expenditures included in such Capital Surcharge are eligible Capital Costs, (b) whether such eligible Capital Costs have been incurred prudently, (c) whether the proposed Capital Surcharge is properly calculated, and (d) whether the Capital Costs have been properly allocated and/or assigned to the incremental and non-incremental systems.

Joint Protestors' May 9 Response

31. Joint Protestors argue that Florida Gas has never refuted the fact that, even though Florida Gas' improvements may have been made directly to non-incremental facilities, these facilities provide service to both non-incremental and incremental customers. Joint Protestors contend that, therefore, under the settlement, these costs should be shared equally by both the non-incremental and the incremental customers.

32. Joint Protestors assert that Florida Gas ignores the fact that prior expansions improved facilities used to provide both non-incremental and incremental service. Joint Protestors further assert that while Florida Gas discusses improvements to four particular facilities, three to the St. Petersburg Lateral and one to the Jacksonville Lateral, which make up the bulk of the facilities for which Florida Gas is seeking cost recovery, Florida Gas fails to acknowledge that all of these facilities are used to provide incremental service. Joint Protestors note that, for instance, Florida Gas states that the Phase III expansion of the St. Petersburg Lateral added a piece of 22-inch parallel looping from MP 34.2 to 49.6. Joint Protestors further note that Florida Gas asserts that a pig launched down the 16-inch St. Petersburg Lateral would not enter the 22-inch looped line and thus, concludes that because it added a section of pipe to the 16-inch facilities, the costs of adding this pipe are assignable directly to FTS-1/SFTS customers. Joint Protestors argue, however, that the Phase III expansion upgraded the St. Petersburg Lateral pipelines, including the 16-inch facilities, to 1000 pounds in order to accommodate the expansion and to provide incremental service.

33. In addition, Joint Protestors disagree with Florida Gas' assertion that digs performed on the Jacksonville Lateral were only associated with the 16-inch portion of that line that was constructed in 1959. Joint Protestors argue that, in the Phase V expansion, Florida Gas added looping to a portion of that lateral, and FTS-2 volumes flow on the entire length of the Jacksonville Lateral from the origin of the lateral (Compressor Station 16) to the termination of the lateral located in Jacksonville, Florida. Joint Protestors contend that, therefore, the costs of these improvements should be allocated 50/50 pursuant to the settlement to the non-incremental and incremental customers.

34. Joint Protestors further argue that they represent the vast majority of the pipeline's billing determinants, were active in settlement discussions in Docket No. RP04-12, attended the settlement conferences, and well understand the provisions of the settlement agreement. Joint Protestors assert that Florida Gas points to nothing in the text of the settlement that supports its reading of the settlement to limit the 50/50 cost sharing methodology to fences and the like. Joint Protestors contend that the costs that Florida Gas proposes to recover in this proceeding are the type of costs that were intended to be shared equally between FTS-1/SFTS and FTS-2 customers

under the settlement, because these costs enhanced or improved pipeline facilities that provide service to both sets of customers, and, accordingly, it is difficult to directly assign these costs.

Discussion

35. The Commission finds that Florida Gas has adequately explained and supported its filing. Accordingly, the Commission removes the refund condition and accepts Florida Gas' revised tariff sheet, effective April 1, 2007.

Allocation of Capital Costs

36. The protestors do not appear to disagree with Florida Gas that all the Capital Costs that Florida Gas seeks to recover in the subject Capital Surcharges were incurred for work on the non-incremental facilities. What they disagree on is Florida Gas' proposal to allocate all of the costs to non-incremental facilities rates under Rate Schedules FTS-1 and SFTS based on Florida Gas' claim that all of the costs were directly related solely to the non-incremental facilities. Joint Protestors argue that certain of the improvements or additions are related to both non-incremental and incremental facilities, citing examples where work was performed on portions of non-incremental facilities that had looping added in expansions. They assert that the non-incremental facilities provide service to both FTS-1 and FTS-2 customers and, on that basis, the costs should be allocated 50/50 between those customers.

37. We find that the settlement and section 26 of the GT&C of Florida Gas' tariff are intended to establish a simple cost allocation process based on which facilities are worked on, rather than requiring a difficult and highly debatable analysis of which customers benefit from the work performed. Indeed, the theory underlying Joint Protestors' proposed allocation process conflicts with the original allocation of costs of expansion projects solely to Rate Schedule FTS-2 customers. Starting with the Phase III Expansion back in 1995, Florida Gas has been allocating 100 percent of the cost of expansions to Rate Schedule FTS-2 without the kind of analysis that Joint Protestors would have the Commission undertake of whether the expansion somehow affected service to FTS-1 or SFTS customers.

38. The Commission's view is consistent with Article IX, section 3 of the settlement, as implemented in section 26(B)(1), which provides that Florida Gas may seek to recover "Capital Costs for capital additions and retirements completed and closed to gas plant in service ("plant") subsequent to February 29, 2004) *on the incremental or on the non-incremental system*, evaluated separately." (Emphasis added.) Under Joint Protestors' interpretation, it would not matter whether the capital additions or improvements were "on" the non-incremental facilities or were "on" the

incremental facilities since an evaluation would have to be made in all instances as to which customers benefit from the work being done.

39. Further, in Florida Gas' initial Capital Surcharge filing in Docket No. RP06-255-000, Florida Gas used the same methodology it applied in this case and the Capital Surcharge ultimately was accepted without condition. In that case, the Joint Protestors were individual intervenors, and the Capital Surcharge contained costs related to projects on the Jacksonville and St. Petersburg Laterals that Florida Gas assigned solely to the non-incremental system rates. No party filed comments in response to Florida Gas' detailed explanation of the projects and costs that it provided in its answer to the protests and, as a result, the Commission removed the refund condition and terminated the proceeding.¹⁹ Any of the parties making up Joint Protestors in the instant proceeding could have raised the same objection to that cost allocation based on the same theory as raised here, but did not do so.

40. Accordingly, we find that the settlement and section 26 of the GT&C of Florida Gas' tariff require a 50/50 allocation of Capital Costs only when the costs are not incurred due to work physically performed "on" the pipeline facilities and there is no basis to associate the work only with one set of facilities, either incremental or non-incremental facilities, e.g., as Florida Gas suggests, fences between facilities, because it is not clear to which facility the work is related. Consistent with the settlement and section 26, Florida Gas has shown that the instant costs should be allocated to the Rate Schedules FTS-1 and SFTS rates for non-incremental facilities.

Other Issues

41. Joint Protestors contended that Florida Gas has not demonstrated that the costs it seeks to recover were incurred to identify or assess pipeline integrity in HCAs or to take specific action to assure pipeline integrity in HCAs. In its answer, Florida Gas included a narrative response addressing the concerns of the Joint Protestors and Seminole and an appendix containing descriptions of the capital costs and related HCAs. Florida Gas contended that all of the costs at issue were incurred in connection with projects addressing HCAs. We find that Florida Gas has adequately supported the recovery of integrity costs.

42. Seminole's argument, that because certain of the costs at issue may be considered maintenance costs, rather than capital costs, such as costs related to hydrostatic testing, the costs should be scrutinized to see if they are in compliance with our policies and the settlement, is without merit. The settlement and section 26 specify what types of costs are recoverable without regard to what accounting

¹⁹ *Florida Gas Transmission Co.*, 115 FERC ¶ 61,182 (2006).

classification they might otherwise have. Thus, as Florida Gas points out, section 26 and the settlement expressly define Capitol Costs to include costs of hydrostatic testing.²⁰

43. Finally, the Commission finds that Florida Gas has provided the necessary information to support its proposed Capital Surcharge filing pursuant to the settlement and its tariff. Therefore, the Joint Protestors' request for a technical conference is denied. Further, the Commission's decision herein concerns whether Florida Gas may recover the instant claimed Capital Costs pursuant to the settlement. Joint Protestors' arguments concerning the scope of a separate future Florida Gas rate proceeding are premature, speculative, and outside the scope of this proceeding.

The Commission orders:

The refund condition established by the March 30, 2007 Order in this proceeding is removed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ See GT&C section 26(A)(2) and settlement Article IX, section 1.